CF0000062002

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.Appeal No. 253 Of 1999

(Memorandum of Appeal Under Section 374 of Cr.P.C.)

APPELLANT IN JAIL : Khursal @ Santosh Chandra, S/o Thanu Ram Chandra, aged 24 years, resident of village Kumhari Chowki Kosir, Thana Sarangarh district Raigarh (MP).

Versus

RESPONDENT : The State of Madhya Pradesh, Through the District Magistrate RAIGARH (MP).

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SMC
Advocate

MEMORANDUM OF APPEAL UNDER SECTION 374 OF Cr.P.C.

AFR

(26)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.253/1999

Khursal @ Santosh Chandra

Vs.

The State of Madhya Pradesh
(Now Chhattisgarh)

CORAM : HON'BLE SHRI FAKHRUDDIN &
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Present : Shri Vimlesh Bajpai, counsel for the appellant.

Shri U.N.S.Deo, Govt. Advocate/Addl. Public Prosecutor for the State.

JUDGMENT

As per Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 28-11-1998 passed by learned First Additional Session Judge, Raigarh in Sessions Trial No. 158/97 by which the learned First Additional Sessions Judges after holding the appellant guilty for causing death of deceased Chhavilal, has convicted the appellant under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. Case of the prosecution in brief is that Police Outpost Kosir, Police Station Sarangarh registered a crime under Section 302 of the Indian Penal Code on 21-6-1997 on the basis of information (Ex.P/10) given by Nand Bai to the effect that on 20-6-1997 at about 6.00 p.m. when her two sons after taking meals went outside, deceased Chhavilal returned at about 9.00 p.m. and went for sleeping on the terrace. After 1 to 1½ hours

she heard the voice of her son Chhavilal '*Oh mother*' whereupon she went on the terrace alongwith her sister-in-law Shyam Bai. On the terrace Chhavilal was crying '*Oh Mother*' and thereafter his voice stopped. She saw the blood spread on the terrace and there was injury over the left shoulder of Chhavilal caused by a sharp edged weapon and some unknown person has murdered her son Chhavilal.

3. The police proceeded for the scene of occurrence. Inquest was conducted after giving due notice to the witnesses vide Ex.P/1. Dead body was sent for autopsy to Primary Health Center, Sarangarh. Dr. P.K. Tripathi (PW-5) after conducting post mortem over the dead body of the deceased submitted his report (Ex.P/12). Blood stained mattress was taken into possession from the spot vide Ex.P/3. On the basis of the memorandum under Section 27 of the Evidence Act of the appellant (Ex.P/4) blood stained T-Shirt was seized. Weapon of offence *Farsi* was seized from Ishwar Prasad vide Ex.P/6 after taking the same out of well. Blood stained full pant, blood stained gamchha and shirt were seized from the appellant vide Ex.P/7. The weapon of offence *Farsi* was sent for examination to the Doctor who opined that the injuries mentioned in the post mortem report could be caused by the above weapon and such injuries may cause death. However, he advised that the weapon of offence be sent for chemical examination for confirmation of presence of blood. The underwear worn by deceased Chhavilal was taken into possession. Spot map was prepared by Halka Patwari vide Ex.P/13. The seized Farsi was put for identification by the Executive Magistrate and the identification memo is Ex.P/19. Identification parade of appellant Khursal @ Santosh Chandra was also conducted vide Ex.P/20. After completing

the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Sarangarh who in turn committed the case to the Court of Sessions Judge, Raigarh from where learned Additional Session Judge, Raigarh received the case on transfer for trial.

4. Learned Additional Session Judge framed charge under section 302 of the Indian Penal Code. However, the appellant abjured the guilt.

5. The prosecution in order to establish the charge against the appellant has examined 19 witnesses in all. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. Learned trial Court after hearing the Public Prosecutor and the counsel for the appellant held the appellant guilty and convicted & sentenced him as mentioned above.

6. Homicidal death of the deceased is not in dispute. Even otherwise from perusal of statement of Dr. P.K. Tripathi (PW-5) who conducted the post mortem over the dead body of deceased and from the injuries described below, the homicidal death of deceased Chhavilal is established :

(i) Sharp cut injury size 11.0 cm x 3.0 cm x TD on the antero-lateral aspect of the left side of neck, placed horizontally, 7.0 cm above the left clavicle. Left common cavotid artry and external jugular vein was completely cut.

(2) Sharp cut injury size 12.0 x 3.0 cm x TD on the left shoulder, 4.0 cm above the left clavicle, placed horizontally.

(3) Sharp cut injury size 18.0 x 5.0 cm x TD reaching upto the vertical column on the postero lateral aspect of the root of the neck.

(4) Sharp cut injury size 1.0 x 0.5 cm x TD on the dorsum of the index finger of right hand as the proximal phalanix.

7. Admittedly there is no eye witness to the incident. The case of the prosecution is based on circumstantial evidence. Learned Additional Sessions Judge has convicted the appellant on the basis of following circumstances :

(i) Six months prior to the incident, the appellant left his house after quarrelling with deceased Chhavilal and joined as Khalasi in a Bus Service.

(ii) The accused was spotted in the vicinity of the place of occurrence at the time of incident.

(iii) The weapon of offence was obtained by the appellant from the temple, which was subsequently seized from the well.

On the basis of the above circumstances, the appellant was held guilty.

8. Learned counsel for the appellant submitted that none of the circumstances relied upon by the prosecution has been established by leading reliable evidence. The circumstances so established do not unerringly point towards the guilt of the appellant and the chain of circumstances is not complete and on the basis of the circumstances so

established it could not be inferred that the appellant alone has caused the death of the deceased.

9. On the other hand, learned counsel for the State supported the impugned judgment.

10. We have heard learned counsel for the parties.

11. So far as the first circumstance is concerned, the Court below relying upon the stipulation of the First Information Report which was lodged by the mother of the appellant, has arrived at the conclusion that since there was a quarrel between the deceased and the appellant six months back and the appellant started residing elsewhere, a motive to the appellant to cause death of the deceased is established. However, from perusal of the Court statement of PW-4 Nand Bai who has lodged the Report, we find that she has not mentioned this fact in her Court statement and to that extent she has been declared hostile. In the statement PW-4 Nand Bai has stated that the appellant and the deceased are her sons. Her son Chhavilal is dead as somebody killed him on the terrace. After hearing the cries of her son Chhavilal she along with her sister-in-law Shyam Bai went there and saw Chhavilal lying, blood was oozing from his body. She also stated that Chhavilal could manage only to say '*Oh mother what happened*' and thereafter he died. She did not see anybody there. Thereafter number of villagers gathered there and on their advice she lodged the report in the police station. She has denied the suggestion given by the Additional Public Prosecutor that she did not give statement A to A of Ex.P/11.

12. Ravishankar (PW-7) brother of the deceased has also not stated anything against the appellant. However, the finding of the trial Court is based on the stipulation of the FIR, which is not substantive peace of evidence and therefore, in our considered opinion the Court below has committed illegality. There is no motive of the appellant to kill his own brother.

13. So far as second circumstance is concerned, PW-8 Ravi Kumar has stated that appellant Santosh works as a Cleaner in a bus and generally he used to wear Green T-Shirt and Catechu (*Kaththa*) Pant. He further stated that after the incident he met the appellant at Bargarh. On enquiry, as to why he do not attend his services, the appellant informed that he has been removed from the service. He stated that thereafter the appellant had borrowed an amount of Rs.25/- from him. On the other day, Rameshwar, Driver, informed him that Santosh has ran away after committing murder of his brother and Police is in search of him. From the statement of this witness we are unable to concur with the finding of the Court below that the appellant was seen in the vicinity of the place of incident as this witness nowhere stated that the appellant was seen in the vicinity and the above finding of the Court below is without any evidence.

14. The Court below has based the conviction of the appellant on the statement of PW-18 Chitra @ Ramkishan. He has stated that the accused daily came to him and purchased coconut. He further stated that after some days the appellant again came and asked for *Farsi* for using the same for oblation and obtained the same. On the next day on being asked by the Police he informed that he had given *Farsi* to the accused and

thereafter the same *Farsi* was put for identification and as per the identification memo of Ex.P/19 he had identified the *Farsi* and put his signature on the document Ex.P/19. Thereafter the identification of the accused was conducted in his presence. He identified the accused amongst 4 – 5 other persons and put his signature on the identification memo (Ex.P/20). The Court below has arrived at the conclusion that the *Farsi* seized from the well was in fact obtained by the appellant from PW-18 Chitra @ Ramkishan, for the purpose of killing his own brother.

15. From perusal of the record, we find that the *Farsi* in question has neither been seized from the accused nor did it contain human blood as per the report of the Serologist. Thus we are of the considered opinion that the Court below was not correct in holding that the above circumstance was also established.

16. In view of the aforesaid discussion, we are of the considered opinion that the prosecution has utterly failed to connect the appellant with the offence alleged against the appellant on the basis of the circumstantial evidence and the Court below was not justified in holding the appellant guilty under Section 302 of the Indian Penal Code & sentencing him to undergo imprisonment for life.

17. In the result, the appeal succeeds. The judgment of the trial Court convicting and sentencing the appellant as above, is set aside. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
Fakhruddin
Judge

Sd/-
Dhirendra Mishra
Judge

Gowri